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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF NEVADA.

In and for the County of Ormsby.

Marion W. Bulkley, Plaintiff
vs.
Joseph W. Bulkley, Defendant

Action brought in the District Court of the First Judicial District of the State of Nevada, Ormsby County, and the complaint filed in the said county, in the office of the Clerk of said District Court on the 24 day of December, A. D. 1905.

THE STATE OF NEVADA SENDS
GREETING TO
JOSEPH W. BULKLEY
Defendant.

You are hereby required to appear in an action brought against you by the above named Plaintiff, in the District Court of the First Judicial District of the State of Nevada, Ormsby County, and answer complaint filed therein within ten days (exclusive of the day of service) after the service on you of this Summons is served in said county, or if served out of said County, but within the District, twenty days, in all other cases forty days, or judgment by default will be taken against you according to the prayer of said complaint.

The said action is brought to obtain the judgment and decree of this court that the bonds of matrimony heretofore and now existing and uniting you and said plaintiff to be forever annulled and dissolved upon the ground that at divers times and places since said marriage you have committed adultery with one Kate Cottrell, and particularly that from about the 9th day of June 1900 to and including the 13th day of June, 1900, at the Charing Cross Hotel in the city of London, England, you lived and cohabited with said Kate Cottrell.

All of which more fully appears by complaint as filed herein to which you are hereby referred.

And you are hereby notified that if you fail to answer the Complaint, the said Plaintiff will apply to the Court for the relief herein demanded.

GIVEN under my hand and Seal of the District Court of the First Judicial District of the State of Nevada Ormsby County, this 24 day of December, in the year of our Lord one thousand nine hundred and Five.

N. B. VAN ETTEN, Clerk.
(SEAL).
Geo. W. Keith,
Attorney for Plaintiff.

Notice of Application for Permission to appropriate the Public Waters of the State of Nevada.

Notice is hereby given that on the 12th day of Sept., 1905, in accordance with Section 23, Chapter XLVI, of the Statutes of 1905, one Philip V. Mighels and Frank L. Wildes of Carson, County of Ormsby and State of Nevada, made application to the State Engineer of Nevada for permission to appropriate the public waters of the State of Nevada. Such application to be made from Ash Canyon creek at points in NE 1/4 of SW 1/4 of section 10 T 15 N R 19 E by means of a dam and headgate and five cubic feet per second is to be conveyed to points in NE 1/4 of SW 1/4 of section 11, T 15 N R 19 E, by means of a flume and pipe and there used to generate electrical power. The construction of said works shall begin before June 1, 1906, and shall be completed on or before June 1, 1907. The water shall be actually applied to a beneficial use on or before June 1, 1908.

Signed:
HENRY THURTELL,
State Engineer.

SCHOOL APPORTIONMENT. STATE OF NEVADA, Department of Education, Office of Superintendent of Public Instruction.

Carson City, Nevada, July 11, 1905
To the School Officers of Nevada:

Following is a statement of the second semi-annual apportionment of School Monies for 1905, on the basis of \$6,990,202 per census child:

Counties	children	amt.
Churchill	135	\$ 943 68
Douglas	317	2,215 90
Elko	1,120	7,829 02
Esmeralda	217	1,516 97
Eureka	389	2,719 20
Humboldt	741	
Lander	318	
Lincoln	764	
Lyon	498	
Nye	285	
Ormsby	989	
Storey	989	
Washoe	2,412	16,860 36
White Pine	525	3,669 85
Total	9,430	\$65,917 61

Joe Platt has received samples of tailor made suits which are, without doubt the finest ever shown in this city. A number of suits have already been made and they are perfect fits in every case. Get your measure taken and do it before the best samples are gone. No guarantee a fit or no pay.

IN THE SUPREME COURT OF THE STATE OF NEVADA.

In the Matter of the Application of Frank P. Kelly in behalf of H. Osuna, for a Writ of Habeas Corpus. Wm. Woodburn, Atty. for Petitioner. Attorney General James G. Sweeney for the State.

Upon the application of Frank P. Kelly, in behalf of H. Osuna, a writ of habeas corpus was issued returnable before this Court. It appears from the return of the writ that H. Osuna is held in the custody of J. F. Bradley, Sheriff of Esmeralda County, upon a commitment of the Justice of the Peace of Hawthorne Township to answer the charge of rape committed upon one Harriet Averill on the night of the 3d of October, 1905.

It is complained by petitioner that this commitment was issued without reasonable or probable cause and in support of this contention the following specific charges are made respecting the testimony introduced upon the preliminary examination of the defendant.

"That the said prosecuting witness, Harriet Averill, upon whom the said crime of rape was alleged to have been committed failed to appear and testify at said examination; but a written statement signed by one Harry Averill and attested by two witnesses a day after the commission of said alleged offense was admitted in evidence by the said Justice of the Peace against the objection of the attorney of said Osuna. That no legal testimony was given showing that Harry Averill, who signed said statement, was the same person as Harriet Averill mentioned in said complaint, and upon whom the said rape was alleged to have been committed. That no legal evidence was introduced by the State at said examination, which is shown by a certified copy of the testimony taken at said examination, and which is hereto annexed and made a part of this petition. That there was no proof that the crime of rape or any other offense had been committed upon Harriet Averill, or upon Harry Averill, or that there was sufficient cause to believe the said Osuna guilty of committing a public offense."

It appears from the record that Osuna was arrested and brought before the Justice of the Peace at Hawthorne on the 6th day of October, 1905, and the complaint of the prosecuting witness, charging him with the crime of rape, read to him. At the request of the defendant the examination was continued until October 10th, at which time the defendant appeared with his attorney and the examination was proceeded with. It appears that the complaining witness was not present and her name was called at the door without response. The deputy sheriff, A. N. Jones, was then called and sworn as a witness and testified that when he brought the defendant to Hawthorne that the complainant and her mother accompanied them. Upon being asked, "Where is Harry Averill now?" answered: "I think she has gone."

The absence of this important witness, who is called in the testimony both as Harriet and as Harry Averill, and who is shown at one time to have been within reach of the process of the court, is not accounted for in the record nor does it appear what steps were taken to procure her testimony at the hearing. Upon this showing of the absence of the witness Harriet Averill, the District Attorney offered in evidence what purported to be a written statement of the facts of the alleged rape signed by the said Harriet Averill on the evening of the 4th of October, in the presence of witnesses and declared in the presence to be a true statement of the facts of the alleged crime. This written statement was admitted in evidence over the objection of the defendant's attorney.

A witness to this written statement, Robert A. Lovegrove, Farmer in charge of the Walker Lake Indian Reservation, was permitted, over defendant's objection, to testify that he had written this statement for the complainant as she dictated the facts, that he read the same over to her before she signed it, and that he warned her of the seriousness of the charge she was making against the defendant.

S. W. Hance, a telegraph operator, residing at the place where the crime is alleged to have been committed, was also permitted to testify, over defendant's objection, that he was a witness to the written statement and heard the complainant detail the facts therein stated; also, that at noon of the same day that the said Harriet Averill had come to his office and had made the same charges against the defendant to him, and, that at her solicitation, he dictated a telegram to her mother, who was then in San Francisco, relative to the assault and requesting her to come home at once. A copy of this telegram was offered and admitted in evidence over the defendant's objection.

Dr. F. C. Paché, a physician residing at Hawthorne, was also permitted to testify, over defendant's objection, that at the time of making an examination of the person of the complainant some days after the alleged offense was committed she informed him that the defendant had made a criminal assault upon her and with violence accomplished his purpose.

The position taken by counsel for the petitioner that these statements of the complainant were made at a time too remote to form a part of the res geste; were hearsay and for that reason were inadmissible, must be sustained. (State vs. Campbell, 20 Nev. 126).

It appears, however, from the record that after the complainant had signed the written statement, that the witness Lovegrove called in the defendant, and that the witness read the statement over to him. That at the same time the witness warned the complainant that it was a serious charge she was making and that she had better be careful what she said;

that she said it was true. That he told the defendant that he would place him under arrest to appear before a court to answer the charge. That he asked the defendant what he had to say to the charge and that the defendant said "he would answer before a court or when it was time to make them."

This portion of the testimony of the witness does not seem to have been considered by counsel upon either side in the presentation of this case as standing in a different position from the testimony relative to the statements of the complainant heretofore referred to, made without the presence of the defendant. We think, however, it presents a question worthy of careful consideration of court and counsel, but as it has not been presented in the briefs or arguments in this matter, and as, in the view we take of the case, the action of the magistrate in holding the defendant to answer, can be sustained upon other portions of the testimony alone, the question will not now be determined.

It is urged by counsel for petitioner that with the statements made by the complainant excluded, there is no competent proof of the corpus delicti. Two witnesses, C. O. Wilson and A. N. Jones, the deputy sheriff, gave testimony relative to an admission made by the defendant while he was being taken upon the train from the place where the offense is alleged to have been committed to Hawthorne. The portion of the testimony of the witness Wilson relative to the admission is as follows:

"This defendant was brought into the car at a place called Shurz between here and Reno with Mr. Jones and a young lady. I afterwards found to be Harry Averill, and they took possession of a seat I had occupied up to that time. I took the seat across the aisle. Seeing the man with bracelets on excited more or less curiosity and when he came into the car the young lady went in the car behind and got another lady which I learned was her mother. The mother came in and was talking to the defendant. The mother asked him what made him do it. The defendant says I don't know. The mother was hysterical and she made the remark I ought to kill you. He assented. He did yes. Well she says why don't I do it and repeated the remark several times and about that time she fainted and swooned away."

The testimony of the deputy sheriff, relative to this admission, was substantially to the same effect.

Counsel for petitioner say in their brief: "The testimony of Wilson and Jones, deputy sheriff, as to the admissions of the defendant to his wife on a railroad car after his arrest are clearly inadmissible because there was no proof that a crime had been committed, and the corpus delicti cannot be established by the confession of the defendant."

It will be conceded that the overwhelming weight of authority in this country is to the effect that an extrajudicial confession or admission of a prisoner, not corroborated by independent proof of the corpus delicti, will not justify conviction. It is not requisite, however, that the crime charged be conclusively established by evidence independent of the confession or admission. It is sufficient if there be other competent evidence tending to establish the fact of the commission of a crime.

In people vs. Bradley, 16 Wend. (N. Y.) 53, Nelson, C. J. said: "Full proof of the body of the crime, the corpus delicti, independently of the confession is not required by any of the cases; and in many of them slight corroborating facts were held sufficient."

In the case of State vs. Hall, 31 W. Va. 505 the Court said: "We know of no decisions anywhere that hold the admissions of the defendant are not competent evidence tending to prove the corpus delicti. Such admissions may not be sufficient proof of the corpus delicti, but they certainly are competent evidence tending to prove that the crime charged has been committed."

In the case of Matthews vs. State, 55 Ala., 187; 28 Am. Rep. 698, where many authorities are cited and reviewed, the Court by Brinknell, C. J. says: "Nor must we be understood as affirming that the proof of the corpus delicti must be as full and conclusive as would be essential if there was no confession to corroborate it. Evidence of facts and circumstances, attending the particular offense, and usually attending the commission of similar offense—or of facts to the discovery of which the confession has led, and which would not probably have existed if the offense had not been committed—or of facts having a just tendency to lead the mind to the conclusion that the offense has been committed—would be admissible to corroborate the confession. The weight which would be accorded them, when connected with the confession, the jury must determine, under proper instructions from the Court."

The case of People vs. Simpson, 107 Cal. 346, cited in petitioner's brief, is in line with the authorities above quoted. The court in that case says: "The term 'corpus delicti' means exactly what it says. It involves the element of crime. Upon a charge of homicide, producing the dead body does not establish the corpus delicti. It would simply establish the corpus; and proof of the dead body alone, joined with a confession of the defendant of his guilt, would not be sufficient to convict. For there must be some evidence tending to show the commission of a homicide, before a defendant's confession would be admissible for any purpose. . . . To be sure, the appearance of the dead body, the nature of the wounds, the evidence of a struggle, the physical circumstances surrounding the affair

may furnish evidence of the corpus delicti—they may indicate that a crime has been committed, but there must be proof of the fact from some source other than that of the defendant's admissions." The court cites other examples and then refers to the case under consideration saying: "Laying aside the evidence of defendant's admissions, there is nothing whatever in the record even pointing toward the commission of a crime." (See also People vs. Jones 31 Cal. 567; State vs. Lamb 28 Mo. 219; State vs. Guild 10 N. J. L. 180, 18 Am. Dec. 414.)

In the case of the State vs. Ah Chuey, 14 Nev. 92, this Court held that "proof of the corpus delicti may be established by circumstantial evidence, provided it is satisfactory."

In the case before us we think there was competent evidence independent of the admissions of the defendant tending to establish the corpus delicti. Dr. Paché testified that on Saturday four days after the alleged offense was committed, he made an examination of the person of the complainant, Harriet Averill, who is shown to be but slightly over fifteen years of age; that he found that her hymen was inflamed and at some time evidently had been lacerated; that the young lady was rather hysterical and would only permit ocular inspection and digital examination on account of the extreme tenderness of the parts. He further testified: "From the evidence I found I would state that in all probability that Miss Averill at some time had had intercourse with a member of the opposite sex." There was other testimony of the witness relative to what appeared to be blood stains upon the complainant's skirt.

The witness Hance, who saw the complainant at noon of October 4th, testified that she was then agitated and nervous and appeared to have been crying; that he observed marks of violence upon her nose and upper lip; that she showed him marks upon her wrists; also, a mark on the side of her throat and that her throat seemed to be swollen and red.

The witness Lovegrove, also, testified to observing on the evening of October 4th, a mark upon the nose and on the side of complainant's throat, apparently scratches.

It also may be gathered from the evidence that the defendant, a man of but twenty-one years of age, and the complainant, his step-daughter, were at the time of the alleged assault, occupying a box car as a home, (the defendant being in the employ of the railroad) the defendant's wife, mother of the complainant being absent, and the complainant being left in defendant's care.

We think these facts and circumstances tended to prove the corpus delicti and were sufficient together with the defendant's admission to justify the magistrate in holding the defendant to answer.

We are not called upon, on this hearing, to pass upon the sufficiency of this evidence to warrant the conviction of the defendant, and upon that question express an opinion. In this connection it is proper to observe that a magistrate in holding a defendant to answer for a crime, is not required to have submitted evidence sufficient to establish the guilt of the person charged beyond a reasonable doubt. As was said in a recent decision, in re Mitchell (Cal. App.) 82 Pac. 347, "In order to hold defendant and put him on his trial, the committing magistrate is not required to find evidence sufficient to warrant a conviction. All that is required is that there be a sufficient legal evidence to make it appear that a public offense has been committed and there is sufficient cause to believe the defendant guilty thereof."

The writ issued herein is dismissed.

NORCROSS, J.

We concur:
Fitzgerald, C. J.
Talbot, J.

Filed December 18, 1905.

W. G. Douglass, Clerk
By J. W. Legate, Deputy.

OFFICIAL COUNT OF STATE FUNDS.

STATE OF NEVADA.

County of Ormsby, s. s.

James G. Sweeney being duly sworn say they are members of the Board of Examiners of the State of Nev. that on the 29th day of Nov '05 they, (after having ascertained from the books of the State Controller the amount of money that should be in the Treasury) made an official examination and count of the money and vouchers for money in the State Treasury of Nevada and found the same correct as follows:

Coin \$151,107 29
Paid coin vouchers not returned to Controller 16,835 71

Total 167,943 00

State School Fund Securities.

Irredeemable Nevada State School bond 380,000 00

Mass. State 3 per cent bonds 537,000 00

Nevada State Bonds 253,700 00

Mass. State 3 1/2 per cent bonds 313,000 00

United States Bonds 215,000 00

Total \$1,865,643 00

W. G. Douglass
James G. Sweeney

Subscribed and sworn before me this 29th day of November, A. D. 1905.

J. Doane,
Notary Public, Ormsby County, Nev.

Large fresh Eastern oysters in bulk at Davey & Malish's

C. W. Friend is getting in his holiday stock which is well selected and prices reasonable.

Quarterly Report.

OFFICE COUNTY AUDITOR
Ormsby County, Nevada.
To the Honorable, the Board of County Commissioners, Gentlemen:
In compliance with the law, I herewith submit my quarterly report showing receipts and disbursements of Ormsby County, during the quarter ending Dec. 30, 1905.

Receipts.	
Balance in County Treasury at end of last quarter	\$40023 36 1/2
County licenses	701 05
Gaming licenses	1057 50
Liquor licenses	310 20
Fee of Co. officers	531 40
Rent of county bldg.	250 00
Poll taxes	620 40
1st. Instalment taxes	14924 21 1/2
Special school tax	1710 90 1/2
Shot machine license	282 00
Cigarette license	42 30
Semi-Annual Set. State Treas	531 78
Delinquent taxes	23 80 1/2
Sale of horse	10 00
Sale of pump	13 00
Keep of W. Bowen	45 00
Total	61,077 36 1/2

Disbursements.	
State fund	6692 82 1/2
General fund	2732 32
Salary fund	2390 00
Agl. Assn. Bond Fund, Series A, \$100.00	250 00
Agl. Assn. Bond Fund, Series B \$100.00	400 00
Co. School Fund, Dist. 1	338 95
Co. School fund, Dist. 2	151 20
Co. School fund Dist. 3	30 70
Co. School Fund Dist. 4	24 00
State School fund, Dist. 1	2605 00
State school fund, Dist. 2	160 00
State School fund, Dist. 3	120 00
State School fund, Dist. 4	165 00
Special building	5850 00
School library, No. 2	86 00
Total	21,968 59 1/2

Re capitulation.	
Cash in Treasury October 1905	40023 36 1/2
Receipts from Oct. 1st to Dec 30, 1905	21054 00 1/2
Disbursements from Oct. 1st to Dec 30, 1905	21968 59 1/2
Balance cash in County Treas. January 1, 1906	\$9108 77 1/2

Respectfully submitted,
H. DIETERICH,
County Auditor.

Recapitulation	
State fund	103 86
General fund	6017 08 1/2
Salary fund	2725 78
Co. School fund	3248 71
Co. School Dist. 1, fund	7638 22 1/2
Co. School Dist. 2, fund	139 64
Co. School Dist. 3, fund	190 26 1/2
Co. School Dist. 3, fund	425 45
State School Dist. 1, fund	1608 06
State School Dist. 2, fund	77 51
State School Dist. 3, fund	371 29
State School Dist. 3, fund	371 30
State School Dist. 4, fund	19 22
Agl. Assn. Fund A	680 82 1/2
Agl. Assn. Fund B	86 86 1/2
Agl. Assn. Fund Special	1918 94
Co. School Dist. fund - special	13735 90 1/2
Co. School Dist. fund 1, library	108 40
Co. School Dist. fund 3, library	6 50
Co. School Dist. fund 4, library	6 10
Total	39108 77 1/2

Respectfully submitted
H. B. VAN ETTEN
County Treasurer

MILLARD CATLIN,

Freighting

Draying

Trunks and Baggage

taken to and delivered at

all trains.

Ho. For the West.

Tell your friends that the colonist

rates are going into effect March 1st,

1905 and expire May 15, 1905. The

rate from Chicago, Ill., \$31.00, St. Louis

Mo., New Orleans, La., \$30.00, Council

Bluffs Ia., Sioux City, Ia., Omaha,

Neb., Kansas City, Mo., Mineola, Tex.,

and Houston Texas, \$25.00. Rates

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and Nevada.

For Sale.

Two quartz wagons, one wood and

one low wheel wagon, also harness for

six horses. Horse, barn and five lo's

Apply at Adam Bay, Silver City, Nev.